

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



December 26, 1979

Application No. 12862 of John Saah, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the lot occupancy requirements (Sub-section 3303.1) to permit a side and rear addition to an apartment house in the R-5-B District at the premises 1521 Church Street, N.W., (Square 194, Lot 60).

HEARING DATES: January 24, 1979, April 11, 1979,
June 6, 1979 and September 5, 1979.

DECISION DATE: October 3, 1979

FINDINGS OF FACT:

1. As a preliminary matter at the public hearing of January 24, 1979, the Board noted that many notices to the occupants of property within 200 feet of the subject property were returned as undeliverable by the Post Office. The applicant testified that most of the letters returned were addresses of parking lots and property recently renovated that was not yet occupied. The Board finds that the notice requirements under the Supplemental Rules of Practice and Procedure before the Board of Zoning Adjustment were satisfied.
2. The subject application was first heard at the public hearing of January 24, 1979 and was continued for further hearing. Several subsequent scheduled public hearing dates were all continued for good cause shown. Additional public hearings of the applicant were held on April 11, 1979, June 6, 1979 and September 5, 1979.
3. The subject property is located on the north side of Church Street, between 15th and 16th Streets, N. W. and is known as 1521 Church Street, N. W. It is in an R-5-B District.
4. The subject site is 2,090 sq. ft. in area and is improved with a three story apartment building. There is a concrete parking pad in the rear yard of the premises.

5. The subject site is rectangular in shape.

6. The applicant purchased the subject property on March 15, 1978. It was then a two story with basement single family dwelling. The Certificate of Occupancy at that time, dated July 22, 1952, No. A-16381 was for the use of the second floor as a tenement house.

7. On or about May 9, 1978, the applicant was issued Permit No. B-259998 for the repair of the subject building to three apartments. The applicant proceeded to undertake the development of the premises.

8. In early September 1978, the rear half of the building collapsed. It was recommended by a structural engineer that the existing masonry walls be removed above the first floor level.

9. The applicant applied for further permits. On September 8, 1978 permits B-263463 and B-263464 were issued. Permit B-263463 was issued for an "addition to a three story apartment house brick/frame as per applicant's plan and plat". Permit B-263464 was issued to "revise permit B-259998 dated May 9, 1978 add loft".

10. The applicant proceeded to redevelop the subject property in accordance with the plans. The applicant testified that the building as constructed deviated in two respects from the plans approved. The bay window in front of the building was deleted to make a flat front. The applicant testified that the change was approved by the District of Columbia by an on-site inspection. The applicant also constructed an entrance at the rear of the building. No approval from the District Government was ever given for the rear addition.

11. The building, as built in accordance with the approved plans, contains a passageway along the east side of the first floor of the building. That passageway is not enclosed at either end. However, the second and third floors of the building project over the passageway and abut the west wall of the building located at 1519 Church Street,

12. On November 17, 1978 the two permits issued on September 8, 1978 were cancelled on the grounds that the applications were approved in error. The error was in approving the application when the permitted lot occupancy of sixty percent was exceeded.

13. As of November 17, 1978 approximately sixty percent of the building had been completed,

14. On November 30, 1978, the Corporation Counsel, in a memorandum to the Chief, Zoning Regulations Division, directed the setting aside of the cancellation of the two permits. It further noted that the passageway, referred to in Finding No. 11, is included in the building area and counts against the lot occupancy limitation,

15. On December 8, 1978, in a letter to the applicant, the Chief of the Permit Branch advised that the order to cease work at the subject premises, dated November 17, 1978, was lifted provided the following conditions were met:

a. That an application for an area variance be filed with the Board of Zoning Adjustment by December 15, 1978.

b. That the applicant apply for a revision permit which will authorize the construction of the new rear entry-way which is not reflected on the originally approved plans.

16. The applicant filed an application for a variance from the lot occupancy requirements on December 15, 1978.

17. A memorandum, dated January 11, 1979, from the Chief, Zoning Review Branch, predicated upon an addition to the subject apartment house, stated that 1254 sq. ft. was allowed for a lot occupancy of sixty percent for the subject property. The property as existing provided 1,037 sq. ft, the addition would add another 340.91 sq. ft, totalling 1,377.91 sq. ft. This resulted in a variance required for 123.91 sq. ft.

18. No permit was ever issued for the construction of a new rear entry-way.

19. The applicant's architect testified that he never revised plans to reflect the present design of the subject property and that the existing kitchen windows and air conditioner never appeared on any plans that he designed. The architect further testified that he did not know how much area each floor of the building occupied, or, how much the building itself occupied.

20. A Certificate of Occupancy No. B-108190, was issued April 10, 1979 to use the basement, first and second floors of the subject premises as an apartment house of three units.

21. The applicant presented no evidence or testimony that the subject property was exceptionally narrow or shallow, had an unusual shape or had some exceptional topographic condition affecting the property. The applicant contended that the actions of the District of Columbia Government in approving the permits created an exceptional condition for this property. He cited the Board's action in Case No. 12463, in which the Board approved an area variance regarding the width of the property.

22. The material facts in Case No. 12463 differ significantly from the situation in this case. In its order dated September 23, 1977, regarding Case No. 12463, the Board found that the property was "uniquely and peculiarly shaped" and concluded that "the unusual shape of the lot renders it unusable for any purpose without the granting of the variance." In the present case, there is no such condition arising out of the size, shape or configuration of the property.

23. Other than relying on the Board's decision in Case No. 12463 and the decision of the Court of Appeals affirming that decision in DeAzcarate v. District of Columbia Board of Zoning Adjustment D.C. App. 388 A, 2d 1233 (1978), the applicant did not argue that the Board was estopped from denying the application.

24. At the public hearing held on April 11, 1979, a representative of the Office of the Corporate Counsel addressed the Board regarding certain issues raised by the Board, including the elements of estoppel. As set out by the Assistant Corporation Counsel, and as set forth by the Court of Appeals, in the case of Paul Wieck v. District of Columbia Board of Zoning Adjustment D.C. App. 383 A, 2d 7 (1978), to establish estoppel, a party must show that he acted in good faith on affirmative acts of a municipal corporation to make expensive and permanent improvement in reliance thereon, and the equities must strongly favor the party involving the doctrine.

25. The Board finds that the applicant did act in accordance with building permits issued by the District of Columbia. The Board finds that the applicant did not present any documentary evidence as to how much money had been expended prior to

the initial cancellation of the permits on November 17, 1979, when the applicant was put on notice that the building exceeded the lot occupancy. In Finding of Fact No. 13, the Board determined that the building was approximately sixty percent complete. The applicant did not establish how much money had been spent at that time, nor how large an expenditure would have been required at that time to bring the building into compliance.

26. As to whether the applicant justifiably relied on the approved permits, the Board finds that the Zoning Regulations as to lot occupancy are clear. Section 1202 of the Zoning Regulations defines "percentage of lot occupancy" to be "a figure which expresses that portion of a lot lying within lot lines and building lines which is occupied or which may be occupied under these regulations as building area". "Building area" is defined as "the maximum horizontal projected area of a building and its accessory buildings..." The Board finds that it is obvious on the face of the definitions and their consistent application that the area on the east side of the subject lot covered by the building at the second and third stories must be included in the percentage of lot occupancy.

27. There was opposition to the application on behalf of the owner of the adjoining premises 1519 Church Street, N.W. Counsel for the opposition argued that the applicant is seeking a variance based on an addition to an existing building whereas in fact the subject building is an entirely new building. He argued that the prior building ceased to exist after its collapse and that the applicant constructed a new building. Counsel further argued that the new building bears no resemblance to the permits that had been issued.

28. Counsel for the opposition further argued that the applicant attached his new building to the wall of the dwelling at 1519 Church Street without any permission, that the applicant built across his property line on top of the opposition's wall to go vertically, and that the applicant raised the height of the wall so that the chimneys at the adjoining property are below the applicant's wall level causing the chimneys to become non-conforming with the building code of the District of Columbia. Counsel further argued that the location of the windows and air-conditioners of the subject property were never approved by the D. C. Government and causes a deleterious effect on the opposition's property.

29. Counsel finally argued that the applicant had not met the burden of proof in establishing his case for the requested variance; that no evidence was introduced to show the existing lot occupancy computations and that the memo of the Zoning Review Branch, dated January 11, 1979, was outdated since the applicant had made many additions to the subject dwelling since the issuance of that memorandum.

30. As to the arguments raised by the opposing property owner through his counsel, the Board finds that the argument as to whether the building was a new building or an addition to an existing building is immaterial, since the Zoning Regulations as to lot occupancy are applicable in either case. The Board finds that the arguments relating to the attachment of the building to the wall of 1519 Church Street and the height of the chimneys are also immaterial, since they do not present zoning questions. The Board concurs with the argument that the applicant failed to meet the burden of proof required to establish that a variance should be granted.

31. ANC-2B filed no recommendation on the application.

CONCLUSIONS OF LAW AND OPINION

Based on the record the Board concludes that the applicant is seeking an area variance the granting of which requires a showing of a practical difficulty upon the owner of the property which stems from the property itself. The subject site is rectangular in shape. There is no exceptional narrowness or shallowness. The Board concludes that there is no exceptional condition in the property itself that warrants the granting of an area variance, nor has the applicant submitted any evidence in support thereof. The Board therefore concludes that there is no basis for the granting of a variance.

The applicant contended that the action of the District of Columbia created an exceptional condition of this property. As to the applicant's reliance on the decision of the Board in Case No. 12463, in Finding of Fact No. 22, the Board determined that the material facts in that case differ from the subject case. The Board found a unique situation arising from the property in Case No. 12463. As no such situation exists herein, the Board concludes that the decision in Case No. 12463 does not control the decision made herein. Furthermore, the Board has consistently stated that it will decide each case heard in the specific set of facts provided. The record herein does not support the granting of a variance.


The Board notes that some of the elements of estoppel are present in the subject case. The Board further notes that the applicant did not directly raise an estoppel argument, even though the thread of the argument runs through much of the record. The Board concludes that the applicant has not established that the District of Columbia is estopped from denying the variance.

Based on the foregoing findings of fact and conclusions of law, it is therefore ORDERED that this application be DENIED.

VOTE: 5-0 (Chloethiel Woodard Smith, Walter B. Lewis, Leonard McCants, William McIntosh and Charles Norris, to deny).

BY THE D. C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 4 JAN 1980

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 12862, of John Saah, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the lot occupancy requirements (Sub-section 3303.1) to permit a side and rear addition to an apartment house in the R-5-B District at the premises 1521 Church Street, N.W., (Square 194, Lot 60).

HEARING DATES: January 24, April 11, June 6
and September 5, 1979

DECISION DATE: October 3, 1979

DISPOSITION: The Board DENIED the application by a vote of 5-0 (Chloethiel Woodard Smith, Walter B. Lewis, Leonard L. McCants, William F. McIntosh and Charles R. Norris to DENY).

FINAL DATE OF ORDER: January 4, 1980

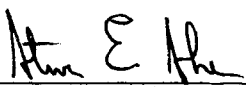
ORDER

Following the Board's DENIAL of the application, the applicant filed a petition for review of the decision with the District of Columbia Court of Appeals. By judgement dated July 29, 1981, the Court of Appeals REVERSED and REMANDED the matter to the BZA for further disposition of the petitioner's application in accordance with the Court's opinion. The Court held that the BZA is estopped from denying the variance sought. Upon consideration of the foregoing facts, it is hereby ORDERED that the Order of the Board dated January 4, 1980 is VACATED and the application is GRANTED.

VOTE: 3-0 (Walter B. Lewis, Connie Fortune and Charles R. Norris to VACATE and GRANT; William F. McIntosh and Douglas J. Patton not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: JUN 22 1982

BZA APPLICATION NO. 13682

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UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS, AND INSPECTIONS.